

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MEMPHIS A. PHILLIP RANDOLPH)
INSTITUTE, THE EQUITY ALLIANCE,)
FREE HEARTS, THE MEMPHIS AND)
WEST TENNESSEE AFL-CIO)
CENTRAL LABOR COUNCIL, THE)
TENNESSEE STATE CONFERENCE)
OF THE NAACP, SEKOU)
FRANKLIN, and KENDRA LEE,)
Plaintiffs,)

Case No. 3:20-cv-00374
Judge Richardson
Magistrate Judge Frensley

v.)

TRE HARGETT, in his official capacity)
as Secretary of State of the State of)
Tennessee, MARK GOINS, in his)
Official capacity as Coordinator of)
Elections for the State of Tennessee,)
and AMY WEIRICH, in her official)
capacity as the District Attorney General)
for Shelby County, Tennessee,)
Defendants.)

DEFENDANTS' RENEWED MOTION TO STAY DISCOVERY

The Attorney General, on behalf of the Defendants, renews his Motion (DE 63) to stay discovery pending resolution of their pending Motion to Dismiss (DE 61) and resolution of their appeal of the “first-time-voter” claim to the Sixth Circuit Court of Appeals (DE 108).

When the original Motion to Stay was filed three months ago, Plaintiffs had undertaken no effort to conduct any discovery in support of their claims. (*See* DE 76 at PageID# 2454-2455.) However, Plaintiffs recently have served subpoenas on seven different county election

commissions,¹ and formal interrogatories upon the Defendants. *See Exhibits A through H*, hereto. Further, since the submission of the Motion to Dismiss, Plaintiffs have dismissed one of their claims (DE 106), this Court and/or the Sixth Circuit have ruled on two other claims as matters of law (DEs 66, 77, and 115), and Plaintiffs' final claim is on appeal (DE 108).

As Defendants have argued here and before the Sixth Circuit, none of the Plaintiffs have standing to assert their constitutional claims because the challenged statutes do not apply to them, because they have suffered no injury-in-fact that is causally connected to the challenged statutes or any other state action, and/or because they cannot satisfy the minimum requirements for organizational or associational standing. Accordingly, the pursuit of discovery at this time is not proportional to the needs of the case, *see In re Bard IVC Filters Products Liability Litigation*, 317 F.R.D. 562, 564 (D. Ariz. 2016), and would needlessly increase the cost of this litigation, especially when discovery would "have no relevance to the dispositive legal issues in question." *Hahn v. Star Bank*, 190 F.3d 708, 719 (6th Cir. 1999).

For these reasons, Defendants respectfully request that this Court stay discovery in this matter pending resolution of the Motion to Dismiss pursuant to Fed. R. Civ. P. 26(c) and this Court's inherent power.

¹ The subpoenas were issued on November 12, 2020, and command responses by November 25, 2020. Assuming that formal service upon the Election Commissions was accomplished on the day of issuance, Plaintiffs have provided the Commissions with—at most—13 days to comply, during which time all of the county Commissions also are hard at work tabulating and certifying ballots from the 2020 national election in order to meet the statutory certification deadline of November 23, 2020. *See* Tenn. Code Ann. §§ 2-8-101(a) and -105.

Defendants further request that the Court order expedited briefing in light of the fact that Plaintiffs have given the Election Commissions less than two weeks to respond to the subpoenas.²

Respectfully submitted,

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² Pursuant to Local Rule 7.01(a)(1), undersigned counsel has conferred with counsel for Plaintiffs and has been advised that Plaintiffs will oppose this Motion.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing documents have been forwarded electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to the parties named below. Parties may access this filing through the Court's electronic filing system.

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